

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 18, 2014 appellant, then a 56-year-old custodian laborer, filed an occupational disease claim (Form CA-2) alleging that he experienced severe neck, low back, bilateral shoulder, bilateral wrist, and bilateral knee pain as a result of his federal employment duties. He first became aware of his condition and realized that it resulted from factors of his federal employment on December 23, 2013. Appellant stopped work on December 29, 2013. On the reverse side of the claim form, the employing establishment noted that it was controverting the claim based on fact of injury, causal relationship, and performance of duty.

In an August 14, 2014 statement, appellant explained that he had worked for the employing establishment as a full-time custodian laborer for the past 20 years and worked a minimum of 40 hours per week. He related that he had previously sustained injuries to his low back, neck, bilateral shoulders, bilateral wrists, and bilateral knees while on military deployment for nine years. Appellant alleged that, when he returned to work on November 3, 2013, following his military deployment, he experienced an aggravation of his injuries, which made it difficult to perform his job duties. He described his job duties and asserted that the repetitive motion of prolonged standing, constant walking, stooping, reaching, twisting, and lifting had aggravated his medical conditions. Appellant explained that he stopped work on December 23, 2013 because the pain became so severe that he was unable to fully perform his duties.

Appellant received medical treatment from Dr. Charles Willis, a Board-certified anesthesiologist and pain management specialist. In progress and work status reports dated January 15 to June 27, 2014, Dr. Willis indicated that appellant was totally disabled from January 15 to June 30, 2014 based on his most recent functional capacity evaluation (FCE).

OWCP received an August 1, 2014 letter controverting appellant's claim from G.N., a health and resource management specialist for the employing establishment. G.N. noted that appellant previously filed an occupational disease claim on January 21, 2014 for the same conditions.<sup>4</sup> She further related that he was on extended military leave from May 6, 2004 to November 15, 2009 and from March 26, 2010 to November 2, 2013. G.N. noted that appellant only worked from November 16, 2009 to March 25, 2010 and intermittently from November 3 to December 30, 2013. She questioned how appellant was capable of performing his military duties for many years, but now claimed an aggravation of his conditions after working a total of 32

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<sup>3</sup> Docket No. 15-1655 (issued December 18, 2015).

<sup>4</sup> Under OWCP File No. xxxxxx743, appellant filed an occupational disease claim on January 27, 2014 alleging an aggravation of his neck, low back, bilateral shoulder, bilateral wrist, and bilateral knee conditions due to his federal employment. In a decision dated March 19, 2014, OWCP accepted his claim. By decision dated August 5, 2014, it rescinded the acceptance of appellant's claim because he did not work at the employing establishment on July 15, 2005, as stated in his claim. Appellant also has a previously accepted July 15, 2005 employment injury in File No. xxxxxx634 for bilateral sprains of the knees, legs, shoulders, upper arms, and hands, as well displacement of thoracic intervertebral disc without myelopathy.

days. G.N. contended that his condition was a result of his extended military duties and not his federal employment.

In an August 28, 2014 report, Dr. Edward Wolski, a family practitioner, described appellant's work duties and reviewed appellant's history. He provided physical examination findings and diagnosed bilateral knee strain, thoracic strain, and lumbar strain. Dr. Wolski opined that appellant sustained work-related injuries while in the performance of his duties as a custodian for the employing establishment on December 23, 2013. He related that appellant's injury occurred while performing repetitive work duties and explained that the medical evidence was supported by appellant's subjective complaints of reported pain, difficulty performing work duties, and objective examination findings.

OWCP denied appellant's claim in a decision dated September 29, 2014. It accepted his employment duties as a laborer-custodian. OWCP denied appellant's claim because the medical evidence of record was insufficient to establish that his diagnosed conditions were causally related to factors of his federal employment.

On December 1, 2014 appellant, through counsel, requested reconsideration. He alleged that medical documentation had been submitted to support an aggravation of his preexisting injuries.

By decision dated February 27, 2015, OWCP denied modification of the September 29, 2014 decision. It found that the medical evidence of record failed to establish that appellant's job duties as a custodian laborer contributed to or aggravated his preexisting injuries.

On March 24, 2015 appellant, through counsel, again requested reconsideration.

Appellant submitted various diagnostic reports of his right knee, left wrist, left knee, bilateral shoulder, and lumbar spine dated August 28, 2014 by Dr. Julian Crutchfield, a chiropractor. He also provided progress notes dated October 14, November 20, and December 17, 2014 by Ryan Stepinoff, a physician assistant, for treatment of aggravation of a preexisting injury.

An October 21, 2014 electromyography and nerve conduction velocity (EMG/NCV) studies of appellant's lower extremities by Dr. Robert Helsten, a family practitioner and pain management specialist, showed evidence of mild-to-moderate, active, acute, and chronic right L4-5 lumbar radiculopathy and moderate, chronic right L5-S1 lumbar radiculopathy, chronic left-sided L5-S1 radiculopathy, and early length-dependent and axonal lower limbs peripheral polyneuropathy.

In an April 13, 2015 decision, OWCP denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board.

By decision dated December 18, 2015, the Board affirmed the February 27, 2015 decision because appellant did not meet his burden of proof to establish his occupational disease claim. The Board set aside OWCP's April 13, 2015 decision finding that he had submitted new

medical evidence which was not reviewed by OWCP in the April 13, 2015 decision. The Board remanded the case for OWCP for review of the additional medical evidence.<sup>5</sup>

On December 22, 2015 OWCP received a November 30, 2015 examination note, patient pain form, and prescription note from Mr. Stepinoff. Mr. Stepinoff related appellant's complaints of moderate-to-severe neck and knee pain. He indicated that appellant sustained an aggravation of preexisting back injury, bilateral knee sprain, and bilateral shoulder strain.

In a December 30, 2015 handwritten examination note, Mr. Stepinoff noted appellant's complaints of severe neck and knee pain. Upon physical examination, he indicated moderate tenderness to appellant's back. Mr. Stepinoff reported that appellant sustained an aggravation of preexisting back injury, bilateral knee sprain, and bilateral shoulder strain. He also included a patient pain form.

By decision dated January 21, 2016, OWCP denied modification of the February 27, 2015 decision.

In examination records dated January 27 to February 24, 2016, Mr. Stepinoff noted appellant's complaints of severe back, neck, and bilateral shoulder pain. He diagnosed aggravation of back injury, bilateral knee, and shoulder sprains. Mr. Stepinoff included a patient pain form and lab reports.

Appellant also submitted physical therapy reports dated April 5 to August 4, 2016 for treatment for his cervical disc displacement, lumbar spine sprain, and cervical spine sprain.

On October 26, 2016 appellant, through counsel, requested reconsideration. She related that new medical evidence was enclosed from Dr. John Barnett, a Board-certified anesthesiologist, which established that appellant became aware that his conditions were related to his federal job duties after he returned to his full-duty position with the employing establishment. Counsel asserted that Dr. Barnett provided an extensive description of appellant's work duties and an explanation of how appellant's new conditions and his previous conditions were aggravated as a direct result of performing those duties. She noted that Dr. Barnett began his report with a detailed and clear history of appellant's conditions and distinguished between the injuries appellant sustained in the military and the new injuries appellant sustained, as well as old injuries which were aggravated when he returned to full-duty work. Counsel alleged that appellant provided sufficient evidence to establish that his medical conditions were caused, aggravated, accelerated, or precipitated as a direct result of performing his work duties over a period of time as a laborer custodian for the employing establishment. She noted that under FECA case law a medical opinion needed only to indicate that on a "more probable than not basis" a claimant's job contributed "in any way" to the disabling condition.

In an August 16, 2016 report, Dr. Barnett related appellant's complaints of bilateral hand symptoms and aggravation of preexisting injury of bilateral knees, the mid and low back, neck, bilateral wrists, and bilateral shoulders. He noted that appellant had been on military deployment for nine years and sustained injuries to his lower and mid back, neck, bilateral shoulders,

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<sup>5</sup> See *supra* note 3.

bilateral wrists, and bilateral knees. Dr. Barnett related that on November 3, 2013 appellant returned to work for the employing establishment and experienced an aggravation of his previously sustained injuries and suffered new injuries. He explained that the aggravation continued to bother appellant and progressively worsened to the point that on December 23, 2013 appellant was unable to perform his work duties. Dr. Barnett reported that appellant sustained an occupational injury that occurred over time and was not a traumatic injury which had occurred on a specific date. He noted that appellant worked as a full-time laborer custodian and provided a detailed description of appellant's employment duties. Dr. Barnett opined that performing appellant's repetitive duties in the course and scope of duty, over time, caused his preexisting injuries to worsen and new injuries to develop.

Upon physical examination of appellant's cervical spine, Dr. Barnett reported decreased range of motion in all planes and hypertonicity and tenderness of the paraspinal muscles upon palpation. Spurling and Adson's signs were positive. Dr. Barnett indicated full range of motion and tenderness and hypertonicity of the paraspinal muscles of appellant's thoracic spine on palpation. Evaluation of appellant's lumbar spine showed decreased range of motion and hypertonicity and tenderness bilaterally on palpation. Straight leg raise testing was positive bilaterally. Dr. Barnett reported that evaluation of appellant's bilateral shoulders revealed decreased range of motion in all planes and tenderness of the anterior and posterior shoulder girdle on palpation. Evaluation of appellant's bilateral hands and wrists also showed decreased range of motion with end range pain and tenderness. Dr. Barnett indicated that examination of appellant's bilateral knees revealed decreased range of motion in all planes with end range pain and swelling and tenderness bilaterally, worse on the left. Anterior drawer test was positive on the left and McMurray's test was positive on the right. Dr. Barnett diagnosed aggravation of cervical disc displacement, aggravation of thoracic sprain, aggravation of lumbar disc displacement, aggravation of bilateral shoulder impingement, aggravation of bilateral rotator cuff syndrome, bilateral shoulder bicipital tendinosis, right shoulder osteoarthritis, aggravation of bilateral osteoarthritis, left wrist ganglion cyst, right wrist carpal tunnel, aggravation of bilateral osteoarthritis, left knee tendinosis, medial meniscus tear of the right knee, anterior cruciate ligament (ACL) tear of the left knee, right knee bone bruise, right hand sprain, and left hand sprain.

Dr. Barnett opined that appellant's diagnosed conditions were "caused or aggravated as a direct result of his normal performance of his duties as a labor custodian." He described appellant's job duties and noted that his duties required repetitive lifting and carrying 50-pound, five-gallon buckets, pushing and pulling, bending, stooping, and maneuvering/moving chairs, desks, and tables to clean. Dr. Barnett noted that appellant's daily duties required repetitive wrist flexion and extension, repetitive grasping, repetitive reaching, repetitive lifting, repetitive elbow flexion and extension, repetitive bending, repetitive twisting, repetitive walking, and repetitive standing for a minimum of 40 hours per week. He explained that these "physical duties cause[d] excessive strain to the spine, whereby undergoing compressional and rotational forces, causing aggravation to the preexisting injuries of the cervical, thoracic, and lumbar spine." Dr. Barnett reported that these duties also caused bilateral hand sprains and aggravation of the bilateral shoulders and wrists directly causing sprains to the soft tissue. He further noted that prolonged standing and walking on hard concrete floors and repetitive squatting also caused aggravation of preexisting conditions to the bilateral knees.

Appellant continued to undergo physical therapy treatment and provide pain management forms.

By decision dated January 24, 2017, OWCP denied modification of the January 21, 2016 decision. It found that the medical evidence of record failed to establish an aggravation of appellant's preexisting back, neck, bilateral shoulders, bilateral wrists, and bilateral knee conditions causally related to factors of his federal employment. OWCP determined that Dr. Barnett did not provide a well-rationalized medical opinion to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>7</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>8</sup> In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>11</sup>

### **ANALYSIS**

Appellant alleged that he developed an aggravation of his preexisting back, neck, bilateral shoulders, bilateral wrists, and bilateral knee conditions and sustained new injuries to his bilateral shoulders, wrists, and knees as a result of his duties as a custodian laborer. OWCP accepted his federal employment factors, but it denied his claim due to insufficient medical

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>8</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>10</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

evidence in the record to establish causal relationship between his federal employment factors and his diagnosed conditions. The Board finds that this case is not in posture for a decision.

Following the Board's December 18, 2015 decision, appellant submitted an August 16, 2016 report from Dr. Barnett who noted that appellant had previously sustained injuries to his lower and mid back, neck, bilateral shoulders, bilateral wrists, and bilateral knees during his military service. Dr. Barnett related that, when appellant returned to work, he experienced an aggravation of his previously sustained injuries and suffered new injuries. He provided a discussion of appellant's diagnostic reports and physical examination findings. Dr. Barnett diagnosed aggravation of cervical disc displacement, aggravation of thoracic sprain, aggravation of lumbar disc displacement, aggravation of bilateral shoulder impingement, aggravation of bilateral rotator cuff syndrome, bilateral shoulder bicipital tendinosis, right shoulder osteoarthritis, aggravation of bilateral osteoarthritis, left wrist ganglion cyst, right wrist carpal tunnel, aggravation of bilateral osteoarthritis, left knee tendinosis, medial meniscus tear of the right knee, ACL ligament tear of the left knee, right knee bone bruise, right hand sprain, and left hand sprain.

Dr. Barnett opined that appellant's diagnosed conditions were "caused or aggravated as a direct result of his normal performance of his duties as a labor custodian." He accurately described appellant's employment duties and indicated that appellant's daily duties required repetitive wrist flexion and extension, repetitive grasping, repetitive reaching, repetitive lifting, repetitive elbow flexion and extension, repetitive bending, repetitive twisting, repetitive walking, and repetitive standing for a minimum of 40 hours per week. Dr. Barnett explained that these "physical duties cause[d] excessive strain to the spine, whereby undergoing compressional and rotational forces, causing aggravation to the preexisting injuries of the cervical, thoracic, and lumbar spine." He reported that these duties also caused bilateral hand sprains and aggravation of the bilateral shoulders, wrists directly causing sprains to the soft tissue. Dr. Barnett further indicated that prolonged standing and walking on hard concrete floors and repetitive squatting also caused aggravation of preexisting conditions to the bilateral knees.

Dr. Barnett provided an affirmative opinion on causal relationship and accurately identified employment factors to which appellant claimed caused his condition, identified findings upon examination, and explained how the requirements of the identified employment factors caused or aggravated appellant's medical conditions. The Board finds that Dr. Barnett's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.<sup>12</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>13</sup> OWCP has an obligation to see that justice

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<sup>12</sup> See *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>13</sup> See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

is done.<sup>14</sup> The Board notes that it is unnecessary for an employee to prove a significant contribution of employment factors to a condition for the purpose of establishing causal relationship.<sup>15</sup> Rather, if the medical evidence reveals that factors of federal employment contributed in any way to the disabling condition, such condition is considered employment related for the purpose of compensation under FECA.<sup>16</sup>

The case will be remanded to OWCP for further action consistent with this decision. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for additional development consistent with this decision.

Issued: December 8, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>15</sup> *D.J.*, Docket No. 16-0288 (issued May 25, 2016).

<sup>16</sup> *See Glenn C. Chasteen*, 42 ECAB 493 (1991); *Beth P. Chaput*, 37 ECAB 158 (1985).